

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAHRI ASAD CUNNINGHAM,

Defendant.

Case No. 23-cr-090-03 JHC

ORDER

This matter comes before the Court on Defendant's motion to continue trial. Dkt. # 252. The Court has considered the materials filed in support of and in opposition to the motion, the rest of the file, and the governing law. Being fully advised, the Court DENIES the motion.

Nearly two years ago, the Government charged Defendant with the crimes at issue in this matter. Dkt. # 1. Since then, Defendant has moved five times for trial continuances; and the Court granted each request. Dkt. ## 78, 167, 227, 234 & 241. Defendant now moves, for the sixth time in this case, for another trial continuance.

Under "the Speedy Trial Act, a defendant must be brought to trial within seventy days of the indictment or of his initial appearance before a judicial officer, whichever is later." *United States v. Clymer*, 25 F.3d 824, 877 (9th Cir. 1994). But "the Act sets forth several types of so-called 'excludable delay,'" which "does not count toward the seventy day limit."

1 *Id.* One such period of “excludable delay” is the “ends of justice” continuance, which
2 Defendant seeks here. *See* Dkt. # 252 at 4 (citing 18 U.S.C. § 3161(h)(7)(A) (authorizing a
3 continuance where “the ends of justice served by taking such action outweigh the best
4 interest of the public and the defendant in a speedy trial”)). A court may grant an “ends of
5 justice” continuance on finding that the failure to do so would deny defense counsel “the
6 reasonable time necessary for effective preparation, taking into account the exercise of due
7 diligence.” 18 U.S.C. § 3161(h)(7)(B)(iv).

8 The decision to deny a trial continuance lies within the district court’s sound
9 discretion and will be disturbed only on a showing that such denial was (1) “arbitrary or
10 unreasonable,” and (2) prejudicial to the defendant. *See United States v. Wilkes*, 662 F.3d
11 524, 543 (9th Cir. 2011) (quoting *United States v. Torres-Rodriguez*, 930 F.2d 1372, 1383
12 (9th Cir. 1991)). “There are no mechanical tests for deciding when a denial of a continuance
13 is so arbitrary as to violate due process.” *Ungar v. Sarafite*, 376 U.S. 575, 589 (1964).
14 Instead, “[t]he answer must be found in the circumstances present in every case, particularly
15 in the reasons presented to the trial judge at the time the request is denied.” *Id.*


16 The Ninth Circuit applies four factors in evaluating a district court’s exercise of
17 discretion to deny a continuance: (1) whether the defendant “was diligent in preparing his
18 defense or whether his request for a continuance appears to be a delaying tactic”; (2) “the
19 usefulness of the continuance,” including “how likely it was that the purpose of the
20 continuance would have been achieved had it been granted”; (3) “the extent to which
21 granting the continuance would have inconvenienced the court and the opposing party,”; and
22 (4) whether the defendant was prejudiced by the denial. *United States v. Kloehn*, 620 F.3d
23 1122, 1127 (9th Cir. 2010). In moving for a continuance, Defendant does not present an
24 application of these factors. *See* Dkt. # 252.

25 Applied here, the four factors weigh against granting a trial continuance. First, as
26 observed by the Government, the record does not show that Defendant has exercised

1 diligence. On this note, counsel's declaration accompanied Defendant's previous motion to
2 continue. Dkt. # 238-1. This time, Defendant did not submit such a declaration. The
3 Government has represented that it intends to rely on fewer than 300 pages of trial exhibits
4 and plan to call about five witnesses. Despite the other documents produced in discovery—
5 some of which may be irrelevant, e.g., the unemployment benefit records of co-defendant
6 Rayvon Peterson, Dkt. # 239 at 4-5—and the health issues raised (which were raised before,
7 Dkt. # 238-1 at 2), Defendant and defense counsel have been afforded more than enough
8 time to prepare for trial in this relatively straightforward case. Second, given the long series
9 of requests for trial continuances, the Court has no confidence regarding the usefulness of
10 granting the motion. And considering this case's history, the third factor—inconvenience to
11 the Court and the Government—weighs heavily in favor of denying the motion. Finally,
12 given the circumstances presented, the Court does not see how Defendant would be
13 prejudiced by the denial of his motion, and trial is still two months away.

14 For these reasons, the Court DENIES Defendant's motion.

15 DATED this 17th day of April, 2025.

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18 John H. Chun
United States District Court
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